

Message Text

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ACTION TRSE-00

INFO OCT-01 EA-11 ADP-00 CIAE-00 DODE-00 PM-07 H-02 INR-10

L-03 NSAE-00 NSC-10 PA-03 RSC-01 PRS-01 SS-15 USIA-12

AID-20 EB-11 CIEP-02 STR-08 OMB-01 CEA-02 CAB-09

FAA-00 FMC-04 CG-00 COME-00 FRB-02 XMB-07 OPIC-12

LAB-06 SIL-01 IGA-02 AGR-20 RSR-01 /184 W

----- 001708

R 190226 Z JUN 73

FM AMEMBASSY JAKARTA

TO SECSTATE WASHDC 7431

INFO AMEMBASSY SINGAPORE

AMCONSUL MEDAN

AMCONSUL SURABAYA

LIMITED OFFICIAL USE JAKARTA 7270

E. O. O. 11652: N/ A

TAGS: EFIN, ID

SUBJECT: INDONESIA- US TAX CONVENTION

REFS: A. STATE 095091

B. JAKARTA 6099

1. SUMMARY: INDONESIANS PROPOSE FURTHER MEETING WITH US TREASURY NEGOTIATING TEAM BE SCHEDULED TO START 23 JULY. IN MEETING 15 JUNE FINANCE MINISTRY OFFICIALS COMPLETED ARTICLE-BY- ARTICLE REVIEW OF TAX CONVENTION DRAFT DATED 25 OCTOBER AND GAVE REACTION TO TREASURY MESSAGE REF A. THEIR COMMENTS SUMMARIZED BELOW WITH PAGE REFERENCES TO DRAFT. ACTION REQUESTED: TREASURY REACTION TO PROPOSALS CONVEYED THIS MESSAGE. END SUMMARY.

2. IN MEETING FRIDAY, JUNE 15 S. SUTANTO, DIRECTOR FOR INDIRECT TAXES, FINANCE MINISTRY SUGGESTED JULY 23 AS TARGET DATE TO LIMITED OFFICIAL USE

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RESUME NEGOTIATIONS AT OUR TAX CONVENTION.

3. MR SUTANTO AND HIS COLLEAGUE MADE THE FOLLOWING SPECIFIC COMMENTS ON THE OCTOBER 25 TREASURY DRAFT:

A. PAGE 4 OF DRAFT: ARTICLE 3, GENERAL DEFINITIONS, (1) (B)(II).
GOI' S OTHER TAX TREATIES USE THE WORDING, "... INDONESIA
COMPRISES TERRITORY OF REPUBLIC INDONESIA AND PARTS OF SEABED
AND SUB- SOIL UNDER ADJACENT SEAS OVER WHICH REPUBLIC INDONESIA
HAS SOVEREIGN RIGHTS IN ACCORDANCE WITH INTERNATIONAL LAW."
FINANCE MINISTRY WOULD BE WILLING TO SUBMIT THE TREASURY' S
WORDING TO THE CABINET SECRETARIAT, BUT CANNOT BE SURE IT
WOULD BE ACCEPTABLE.

B. PAGE 11: ARTICLE 5, PERMANENT ESTABLISHMENT, (3): THE
INDONESIANS ARE STILL UNEASY WITH THE US WORDING, ALTHOUGH
THEY AGREED THAT A COMBINATION OF THE ACTIVITIES LISTED IN
ARTICLE 5 (3) SHOULD NOT ALONE CONSTITUTE A PERMANENT
ESTABLISHMENT. (COMMENT: AS ELSEWHERE, HERE THEY CLING TO
OECD WORDING.)

C. PAGE 14: ARTICLE 6 INCOME FROM REAL PROPERTY: CHANGE THE
WORD " ROYALTIES" IN LINE 5 TO " INCOME."

D. PAGE 17: ARTICLE 7, SOURCE OF INCOME (6): LINE 3 PARAGRAPH
(3) SHOULD BE PARAGRAPH (4). IN PARAGRAPH (7) LINE 3,
PARAGRAPH (2)(B) SHOULD BE PARAGRAPH (3) (B).

E. PAGE 18, ARTICLE 7 CONTINUED: FIRST LINE, CHANGE PARAGRAPH
(2) TO PARAGRAPH (3).

F. PAGE 23: ARTICLE 9, SHIPPING AND AIR TRANSPORT: SUTANTO
SAID HE WOULD LIKE TO KNOW WHETHER TREASURY CAN ACCEPT THE
INDONESIAN PROPOSAL TO EXEMPT SHIPPING ENTIRELY FROM TAXA-
TION AND TO GRANT AIRLINES A HALF EXEMPTION.

G. PAGE 26: ARTICLE 11, DIVIDENDS: THE INDONESIAN OFFICIALS
INQUIRED WHAT EXACTLY WAS THE THRUST OF THE PARENTHETICAL
EXPRESSION IN PARAGRAPH (4).

H. PAGES 28 AND 29: ARTICLE 12, INTEREST: IN ORDER TO AVOID
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SPECIFICALLY MENTIONING THE EXPORT- IMPORT BANK AND OPIC IN
THE TEXT OF THE CONVENTION, THE FOLLOWING AMENDMENT IS
PROPOSED: IN PARAGRAPH (3)(A) AND (B) DELETE THE PARTS OF
THOSE PARAGRAPHS FOLLOWING THE WORDS " DERIVED BY INDONESIA"
AND " DERIVED BY THE US." THE LANGUAGE DEFINING BENEFITS TO
OPIC AND EXIM SHOULD BE PLACED IN A PROTOCOL INSTEAD.
SUTANTO ASKED FOR ADDITIONAL INFORMATION ABOUT EXIM AND OPIC

LENDING TO SUPPORT CASE FOR EXEMPTING THEIR INTEREST FROM TAXATION ; SPECIFICALLY, LENDING TERMS-- INTEREST, GRACE PERIOD, MATURITY-- WHO IS ELIGIBLE FOR THESE LOANS, AND HOW THE FUNDS ARE RAISED WITH WHICH TO MAKE THEM (E. G., BY APPROPRIATION, BORROWING, ETC.).

I. PAGE 31: ARTICLE 13, ROYALTIES: SUB- PARAGRAPH (3)(A)(I) DELETE THE WORDS " BUT NOT" FROM THE EXPRESSION " COPYRIGHTS OF LITERARY, ARTISTIC OR SCIENTIFIC WORKS (BUT NOT INCLUDING COPYRIGHTS OF MOTION PICTURE FILMS...)." THE INDONESIANS WOULD APPRECIATE AN EXPLICIT TREASURY REACTION TO THIS SUGGESTION BEFORE THE NEXT MEETING.

J. PAGE 36: ARTICLE 15, INDEPENDENT PERSONAL SERVICES: THE INDONESIANS WOULD LIKE TO SUBSTITUTE FOR OUR TEXT THE PARALLEL PROVISION IN THE OECD MODEL TREATY (OECD ARTICLE 14).

K. PAGE 50: ARTICLE 23, NONDISCRIMINATION: THE INDONESIANS WISH TO DELETE THE WORDS, " OF EVERY KIND IMPOSED AT THE NATIONAL, STATE OR LOCAL LEVEL," AND SUBSTITUTE THE WORDS, " WHICH ARE SUBJECT TO THIS AGREEMENT."

4. REGARDING IMPACT ON INDONESIA OF PROPOSED CHANGES IN US TAXATION OF FOREIGN- SOURCE INCOME, SUTANTO SAID HE FOUND ENTIRELY UNDERSTANDABLE THE US TREASURY PROPOSAL TO OFFSET FOREIGN TAX CREDITS BY AMOUNTS EARLIER CLAIMED AS FOREIGN LOSSES AGAINST US INCOME. THE INDONESIAN GOVERNMENT COULD LIVE WITH SUCH A PROVISION APPLICABLE TO PRIVATE AMERICAN INVESTMENT IN INDONESIA. ON THE OTHER HAND GOI HOPES CURRENT TREATMENT OF INCOME FROM INVESTMENT IN MANUFACTURING AND PROCESSING CAN BE PRESERVED BY INCLUSION APPROPRIATE LANGUAGE IN CONVENTION. AND HE ASKED WHETHER TREASURY COULD PROVIDE DRAFT LANGUAGE TO THAT EFFECT IN TIME FOR THE INDONESIANS TO STUDY IT BEFORE THE JULY MEETING.

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TM ACTION REQUESTED: PLEASE INFORM US WHETHER JULY 23 DATE FOR RESUMPTION NEGOTIATIONS IS ACCEPTABLE TO TREASURY; IF NOT, SUGGEST ALTERNATIVES. IN RESPONSE TO REQUESTS PLEASE ALSO

FURNISH, IF POSSIBLE,

A) EXPRESSION SUBSTANTIVE TREASURY VIEW THEIR PROPOSAL ON TRANSPORT COMPANIES;

B) ADDITIONAL BACKGROUND ON EXIM AND OPIC;

C) PROPOSED WORDING RESPONSIVE THEIR INTERESTS DESCRIBED PARA 4;

D) TREASURY REACTION TO PROPOSAL ON FILMS;

E) CLARIFICATION OF ARTICLE 11, DIVIDENDS (PARA 3 G);

F) AND AN INDICATION WHETHER ANY OF THE POINTS PROPOSED BY
THE INDONESIANS -- PARA 3 A, FOR EXAMPLE -- MIGHT BE
DIFFICULT FROM USG STANDPOINT.
GALBRAITH

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